

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JESSICA VALDEZ, on behalf of herself,
individually, and on behalf of all others similarly-
situated,

Plaintiff,

-against-

MICHPAT & FAM, LLC, d/b/a DAIRY QUEEN
GRILL & CHILL RESTAURANT, and PATRICIA
NAPPO, a/k/a PATRICIA DEMINT, individually,

Defendants.

Case No.:

2:20-cv-02570-AMD-AKT

**STIPULATION TO
DECERTIFY THE
CERTIFIED CLASS ACTION**

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the parties in the above-captioned action, JESSICA VALDEZ, on behalf of herself, individually, and on behalf of all others similarly situated, (“Plaintiffs”) and MICHPAT & FAM, LLC, d/b/a DAIRY QUEEN GRILL & CHILL RESTAURANT, and PATRICIA NAPPO, a/k/a PATRICIA DEMINT, individually (“Defendants”) as follows:

WHEREAS, Plaintiff brought this case for damages and equitable relief based upon Defendants’ alleged willful violations of Plaintiff’s rights guaranteed to her by: (i) the overtime provisions of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 207(a); (ii) the overtime provisions of the New York Labor Law (“NYLL”), NYLL § 160, N.Y. Comp. Codes R. & Regs. (“NYCRR”) tit. 12, § 146-1.4; (iii) the minimum wage provisions of the FLSA, 29 U.S.C. § 206(a); (iv) the minimum wage provisions of the NYLL, NYLL § 652(1), NYCRR § 146-1.2; (v) the NYLL’s requirement that employers pay their employees an additional one hour’s pay at the minimum wage rate for those days when their employees’ spread of hours exceeds ten in a workday, NYLL § 652, 12 NYCRR § 146-1.6; (vi) the NYLL’s requirement that employers pay their manual worker employees not less frequently than on a weekly basis, NYLL § 191(1)(a); (vii) the NYLL’s requirement that employers provide on each payday wage statements to their employees containing specific categories of accurate information, NYLL § 195(3); (viii) the NYLL’s requirement that employers furnish employees with a wage notice at hire containing specific categories of accurate information, NYLL § 195(1); and (ix) any other claim(s) that can be inferred from the facts set forth herein.;

WHEREAS, on April 23, 2021, Plaintiff moved, *inter alia*, for conditional certification of the FLSA collective and class certification of the sixth and seventh claims in Plaintiff's complaint for relief pursuant to the NYLL with respect to the following;

WHEREAS, on January 26, 2022, Magistrate Judge Steven I. Locke issued a Report and Recommendation conditionally certifying the FLSA collective and certifying the following NYLL class:

...all current and former employees, who from the opening of Defendants' Dairy Queen restaurant until March 1, 2020, performed any work for Defendants in New York as 'crew' members, assistant managers, or managers, and who were paid on an hourly, bi-weekly basis.

WHEREAS, on March 30, 2022, District Judge Ann M. Donnelly issued an Order adopting Judge Locke's Report and Recommendation;

WHEREAS, subsequent to Judge Donnelly's Order the Plaintiff mailed court approved notices concerning the rights of FLSA collective and class members, respectively;

WHEREAS, twelve people opted into the FLSA collective and a number of people opted out of the NYLL class;

WHEREAS, the parties have been engaged in an ongoing dialogue aimed at resolution, available damages, current state of the law and financial viability of the Defendants;

WHEREAS, on February 14, 2024, the Defendants made a Rule 68 Offer of Judgment to the members of the FLSA collective;

WHEREAS, on February 16, 2024, the FLSA collective Plaintiffs accepted the Rule 68 Offer of Judgment;

WHEREAS, on February 21, 2024, the Clerk of the Court entered judgment in favor of the FLSA collective Plaintiffs effectively dismissing all federal claims in this matter;

WHEREAS, the parties have agreed to take steps towards fully and finally resolve the matter by decertifying the NYLL class; and, as such,


IT IS STIPULATED AND AGREED, that the parties will mail out the attached "CLASS DECERTIFICATION NOTICE TO CLASS MEMBERS" within 30 days of the date this stipulation is so-ordered; and upon said mailing;

IT IS STIPULATED AND AGREED, that the Plaintiff will notify the Court that all notices have been mailed out and the Court will issue an order dismissing the action and closing the case.


Dated: March 18, 2024

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**LAW OFFICES OF
JASON L. ABELOVE, P.C.**

By: 
666 Old Country Road, Suite 303
Garden City, New York 11530
Attorney for Defendants

BORRELLI & ASSOCIATES, P.L.L.C.

By: 
Michael J. Borrelli, Esq.
910 Franklin Avenue, Suite 205
Garden City, New York 11530
Attorneys for Plaintiffs

SO ORDERED

Dated: Central Islip, New York
March __, 2024

Hon. Steven I. Locke, U.S.M.J.